Land Use and Local Government

I. Introduction

The Land Use and Local Government chapters in the Drafting Scoping Plan ("DSP") put forth strategies that are substantive, well-developed, and for the most part in alignment with the advisory panel recommendations. The leadership and decisions of local governments will play a key role in determining how successful we are in achieving the goals of the Climate Leadership and Community Protection Act ("CLCPA"). While we support many of the recommendations in the DSP, we include some suggestions below.

Commenters are concerned that many of the DSP recommendations appear to rest on the assumption that mitigation and adaptation goals must be achieved through new development, including in disadvantaged communities ("DACs"). The Final Scoping Plan ("FSP") should highlight the need for investments in DACs to address climate and environmental justice concerns—including air pollution, extreme heat, and flooding—through targeted strategies as development occurs, rather than relying on development for solutions. Additionally, the FSP must recognize and acknowledge the differences in needs among rural, suburban, and urban areas. Smart growth and Transit-Oriented development ("TOD") solutions need to be contextual, as there are no one-size-fits-all solutions; for example, cities with significant policymaking capacity might require less streamlining than smaller towns that need more technical assistance.

It is critical that the State partner with local governments and local community-based organizations in developing programs, providing technical assistance, and streamlining funding and permitting processes to achieve the CLCPA mandates. For example, the DSP discusses the creation of a Clean Energy Community Dashboard (LG1).[1] This and other resources that will be created should be arrived at by working closely with local community-based organizations that might already be doing some of this work. It is also imperative that these resources are easily accessible to all stakeholders. Members of DACs should be engaged in the planning and implementation of projects in their communities, with a process that prioritizes community-centered visions.

Additionally, the DSP recommends (LU9) that State agencies increase coordination with Regional Economic Development Councils ("REDCs") to align REDC regional strategic plans with smart growth and equity principles.[2] To further this recommendation, local governance structures and appointments to the REDCs need to be reformed to diversify these bodies to adequately reflect the DACs and other communities that will be affected by their decisions.

II. TOD/E-TOD and Smart Growth

The DSP misses an opportunity to promote sustainable and resilient industrial development in compliance with the CLCPA's commitment to equity and a just transition. Transit Oriented Development/Equitable Transit Oriented Development ("TOD/E-TOD") and smart growth strategies tend to focus on increasing commercial and residential density as well as introducing transit options like rail and bus in areas that can accommodate additional growth.[3] However, growth can be problematic for certain DACs in denser areas, and can lead to gentrification and displacement. The definition of TOD/E-TOD needs to prepare communities for a just transition, rather than simply striving for development and growth, while also addressing other needs of the community that may not be specifically related to growth.

TOD often offers the opportunity to address problems by creating density in places that have existing transit infrastructure. However, a DAC might not necessarily need additional density to address certain climate or environmental issues. Rather, their concerns might be addressed immediately through dedicated funds marked for DACs. These investments could include but not be limited to: energy efficiency upgrades to buildings, renewable energy generation and storage, increased green infrastructure to bolster resiliency, and reduction of emissions from local pollution sources.

To incorporate these principles, we recommend amending the definition of "smart growth" to include the following language: "Land use development that mixes diverse building types and land uses to create affordable housing, transportation, education and healthcare infrastructure, among others, but is not limited to the planning and implementation of new commercial or residential development."[4] Smart growth must address industrial development, as

[1] *See* N.Y. Climate Action Council, *Draft Scoping Plan* ("DSP"), 303–04 (2021), https://climate.ny.gov/-/media/Project/Climate/Files/Draft-Scoping-Plan.pdf.
[2] DSP at 294.
[3] DSP at 272.
[4] *See* Comments by Priya Mulgaonkar & Juan Camilo Osorio on the Recommendations Prepared by the Land Use and Local Government Panel to the Climate Action Council (Apr. 19, 2021) (on file with author).

well as other infrastructure and programming to guarantee climate justice and a just transition. The definition should also include the investment of technical and financial resources to address equity, environmental, and climate justice issues in DACs as well as the inclusion of members of DACs in the planning and implementation of all climate change adaptation and mitigation efforts in their neighborhoods.

Commenters appreciate that the DSP acknowledges the need to "[e]nsure equitable development while avoiding displacement and gentrification."[5] However, we urge the Climate Action Council ("CAC") in the FSP to include explicit language about the unintended consequences, including gentrification, of traditional approaches to smart growth practices. For example, the CAC should make the recommendation that State funds cannot be used by developers to invest in building features or amenities that are marketed as green, but can be leveraged to increase rents or displace long-time and/or low-income tenants.

Additionally, commenters urge the CAC to include in the FSP specific recommendations for model law to address local climate and environmental issues. For example, the DSP acknowledges that "[u]rban and community forest cover is declining by about 6,720 acres annually."[6] To mitigate the effects of air pollution, stormwater runoff, and extreme heat—which are exacerbated by the urban heat island effect—solutions such as increasing tree canopy coverage, increasing green space, and building green infrastructure including bioswales and rain gardens should be considered and incentivized.[7]

III. Disadvantaged Communities

The FSP recommendations must specifically address climate justice issues in frontline communities that have long faced multiple burdens and that are often the first and worst to get hit by climate disasters.[8] The FSP should include land use strategies that prioritize CLCPA investments in DACs in order to repair the disparate impacts of climate change and to address just transition priorities—not only to increase smart growth development. Strategies must explicitly incorporate the legislation's mandate to "prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities."[9] Therefore, mitigation strategies should equally balance multiple priorities to address the need for pollution prevention, green infrastructure, open spaces, and reduction of co-pollutants in DACs.

The DSP lays out strategies to enable resources and policies to support further and sustained development of local land use plans. These efforts should be led in collaboration with local community-based organizations. Further, we urge the CAC to call for the creation of a new "Climate Justice Through Community Planning and Action" grant program to fund the implementation of local land use plans created by DACs to achieve CLCPA goals to reduce emissions, adapt vulnerable areas, and guarantee just transition priorities. This grant would finance local capacity building in DACs to strengthen the review of proposals and participation

[5] DSP at 297.
[6] DSP at 280.
[7] Smart Surfaces Coalition, https://smartsurfacescoalition.org/ (last visited May 24, 2022).
[8] *See, e.g.*, EPA. 2021. Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts. U.S. Environmental Protection Agency, EPA 430-R-21-003.
[9] CLCPA § 7(3).

in the planning and project review process. UPROSE's Green Resilient Industrial District (GRID) is one example of community-led land use planning.[10]

IV. High Density Urban Areas

The FSP should have explicit strategies to prioritize mitigation and adaptation investments in high density urban areas where there might not be existing infrastructure to facilitate TOD, but where communities require immediate attention given historic disinvestment and environmental justice issues. These new strategies need not be limited to TOD, and should address the specific concerns of other higher density urban areas that are already examples of TOD (since they already have good transit access) but may have other needs. For example, recommendations should address an update of the Department of State Coastal Management Program to require the reduction of truck traffic in working waterfronts in and around environmental justice areas where barging, rail, and alternate vehicles can be used to reduce emissions and improve local air quality.

V. Aligning Local Zoning Codes with Climate and Equity Mandates

Commenters appreciate the DSP's recognition that local zoning can often frustrate achievement of the CLCPA's emission limits and equity mandates, but urge the Council to expand the analysis and scope of recommendations in the FSP. For example, land use strategy LU10, "Direct planning, zoning, and pre-development assistance to municipalities," is expressly limited to "empower[ing] local governments to achieve smart growth planning and development."[11] The focus strictly on smart growth limits this recommendation's effectiveness.

The FSP should call for the State to provide technical support and develop model laws to affirmatively identify and ameliorate local policies that contradict State climate and environmental policy, whether or not they are related to smart growth. For example, in New York City and many communities throughout the State, e-commerce mega-warehouses are permitted as of right, and thus exempted from environmental review. This development can occur in spite of the fact that such facilities can attract thousands of vehicle trips per day and increase co-pollutant emissions by hundreds of tons per year, often in or near DACs and overburdened communities. The State must identify ways to harmonize local policies, including those not directly related to the environment, with the CLCPA.

Furthermore, commenters call on the Council to recommend that all municipalities and local governments develop Climate and Air Quality plans that are consistent with the CLCPA's emission limits and equity provisions, and that the State provide resources and support for such plans.

VI. Other Concerns

Commenters are also concerned about the following components of strategies recommended in the Land Use and Local Government Chapters of the DSP.

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[10] *The Green Resilient Industrial District*, UPROSE, https://www.uprose.org/the-grid (last visited June 13, 2022).
[11] DSP at 295.

LU1: Require participation in carbon markets[12]

Environmental justice communities have long held a deep skepticism of market-based solutions to climate issues, such as carbon markets. The FSP should be cautious of the failures of past market-based approaches to regulating pollution, especially those that allow offsets. As noted by the Climate Justice Working Group ("CJWG"), environmental justice communities have historically not benefited from offset market-based policies even though they are the most burdened by pollution-generating facilities.[13]

As described in our comments related to AF6 in the Agriculture and Forestry Chapter, forest carbon sequestration should not be used to allow fossil fuel emissions from other sectors to persist, as proposed in the development of a forest carbon market. Fossil fuel polluters should not be allowed to circumvent their responsibility to curb direct emissions by claiming to offset them by purchasing impermanent carbon gains elsewhere.

Offset schemes seek to avoid accountability for direct emissions of greenhouse gases with uncertain, imprecise, and difficult-to-monitor supposed increases in carbon stocks elsewhere. Offset-based schemes are premised on a scientific fallacy that equates increases in carbon stocks in forest soils and vegetation with past and ongoing losses of fossil carbon. However, these are not at all equivalent. It is critical to note that climate change is primarily attributed to the removal of large amounts of *fossil* carbon, which would have remained sequestered in the absence of anthropogenic activities. In contrast to these slow-cycling fossil stocks, carbon in biogenic pools including vegetation and soils in New York forests is inherently impermanent and perpetually vulnerable to decomposition. When carbon sequestered in soils and vegetation undergoes decomposition, as it does naturally, it may return to the atmosphere on relatively short timescales (in contrast to more inert fossil carbon stocks). As a result, "credits" offsetting fossil fuel emissions are essentially rendered meaningless. Carbon sequestration rates in New York state should be restored and accelerated (for example, through reforestation) with independent reductions of fossil fuel emissions. Offsets should not be allowed to delay irreversible losses of fossil carbon.

The Final Scoping Plan should take heed of the failures of past offset market-based approaches to regulating pollution. For example, one leading study found that California's cap-and-trade policy, which represents a market scheme that permits offsets, has exacerbated environmental injustice. An analysis of the program found that (1) regulated facilities were disproportionately sited in environmental justice neighborhoods, (2) most of the regulated facilities increased emissions of both GHGs and co-pollutants during the time period studied, and (3) neighborhoods that experienced increases in both annual average GHGs and annual average co-pollutants were more likely to be environmental justice neighborhoods.[14] The use of offsets allowed regulated facilities to keep polluting (and degrading local air quality) by purchasing

[12] DSP at 277.
[13] DSP *Appendix B: CJWG Feedback on Advisory Panel Recommendations* at slide 4 (June 28, 2021), https://climate.ny.gov/-/media/Project/Climate/Files/Draft-Scopping-Plan-Appendix-B.pdf.
[14] *See* Lara Cushing et al., *Carbon trading, Co-pollutants, and Environmental Equity: Evidence from California's Cap-and-Trade Program (2011–2015)*, 15 PLoS Med. e1002604 (2018).

offsets from projects largely out-of-state that provided no benefit to frontline communities.[15] To avoid replicating these harms, the FSP must consider non-GHG co-pollutants and local environmental impacts to environmental justice communities and thus avoid offering New York forests as an opportunity to offset fossil fuel emissions.

There is simply no substitute for directly reducing fossil fuel emissions. Such reductions are critical to achieving climate targets as well as environmental justice goals as pollution hotspots disproportionately burden low-income communities and communities of color. The FSP should not support accounting that allows avoidable ongoing fossil fuel emissions to persist based on forest carbon sequestration.

With the exception of the carbon markets recommendation discussed above, in our view, the Land Use Chapter's forestry-related recommendations are superior to those provided by the Forestry and Agriculture Chapter. The Land Use Chapter focuses on conservation and reforestation, in contrast to the Forestry and Agriculture Chapter's focus on forestry management and forest crop production. This internal inconsistency is contradictory. The FSP should include strategies that focus on conservation and reforestation rather than maintain the conflicting recommendations in the Agriculture and Forestry chapter, which focus on maintaining the profitability of the forestry industry.

LU3: Avoid Agricultural and Forested Land Conversion[16]

While we support strategies to avoid forested land conversion and increase support for historically underserved farmers as described under LU3, the FSP should more clearly distinguish between strategies to preserve forestland and strategies to prevent farmland conversion. Protecting forestland should be prioritized for climate benefits, while additional guardrails should be required for any strategies related to farmlands in order to prevent cropland expansion and to ensure that existing croplands are managed in ways that maximize climate benefits. Improperly managed, farmlands can further contribute to climate change and weaken carbon sequestration. The FSP should include strategies to ensure that practices on existing croplands do not lead to losses of soil organic carbon or have other negative impacts on climate and carbon cycling. For example, the FSP should include strategies that incentivize or require the adoption of agro-ecological practices such as riparian buffers, cover crops, agroforestry, or managed rotational grazing to restore losses of soil carbon on existing croplands. Additionally, the DSP notes "quantification of No Net Loss" as an area of research for DEC and AGM to evaluate.[17] However, the FSP must prioritize conservation of existing forests and native vegetation over farmland expansion and must not treat these land uses as substitutable or replaceable through net accounting.

LG5: Prioritize methane recovery[18]

[15] *Id.*
[16] DSP at 281.
[17] DSP at 282.
[18] DSP at 307.

Methane recovery should only be used for on-site energy production. Commenters oppose the use of biomethane or biogas in the existing natural gas system and any proposal to use biogas via anaerobic digesters for heating buildings. As noted in the DSP, the CJWG recommended that "caution should be taken to avoid biogas use intentionally or inadvertently leading to the extended use of fossil fuels."[19] Any energy generated from biogas through anaerobic digestion should be used only on-site (for example, providing power to the wastewater treatment plant that is home to the digester).

LG5: Support fleet electrification[20]

As discussed in the Transportation chapter, the FSP should include enforceable, tangible, and specific policies with respect to State support for municipal, county, and school district fleet electrification. Local government strategy LG5 is much too tentative, recommending only that NYSERDA and DEC "support" local fleet electrification. The FSP should include specific goals and call for financial and technical support to ensure local government fleets are leading the way on zero emission vehicle adoption—for passenger vehicle and medium- and heavy-duty vehicles—to match the pace of electrification called for by any CLCPA-compliant mitigation scenario.

VII. Conclusion

The Land Use and Local Government Chapters of the FSP Should:

- Recognize that DACs need climate-related investments immediately, and that some DACs might not be served by TOD.
- Recognize that different communities will require different types of support, and that local governments and community-based organizations must be involved in decision-making.
- Call for the creation of a new "Climate Justice Through Community Planning and Action" grant program to fund the implementation of local land use plans created by DACs.
- Reject participation in carbon markets.
- Reject the use of biomethane and biogas except for limited on-site usage.

Respectfully submitted,

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Alliance for a Green Economy
Brookhaven Landfill Action and Remediation Group
Clean Air Coalition of WNY
Climate Reality Project, Capital Region NY Chapter
Climate Reality Project, Finger Lakes Greater Region NY Chapter
Climate Reality Project, Hudson Valley and Catskills Chapter
Climate Reality Project, Long Island Chapter
Climate Reality Project, NYC

[19] DSP at 250.
[20] DSP at 307.

Climate Reality Project, Westchester NY Chapter
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Climate Solutions Accelerator of the Genesee-Finger Lakes Region
Catskill Mountainkeeper
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Community Food Advocates
CUNY Urban Food Policy Institute
Earthjustice
Environmental Advocates NY
Fossil Free Tompkins
Gas Free Seneca
Grassroots Environmental Education
Green Education and Legal Fund
HabitatMap
Hotshot Hotwires
Long Island Progressive Coalition
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New Clinicians for Climate Action
New York City Environmental Justice Alliance
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